

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ADRIANA RISSER,	:	CIVIL ACTION
<i>Plaintiff,</i>	:	
	:	
v.	:	No. 18-4758
	:	
ANDREW SAUL,	:	
Commissioner of Social Security,	:	
<i>Defendant.</i>	:	

MEMORANDUM

This suit arose from Plaintiff Adriana Risser’s appeal of the administrative law judge’s (“ALJ”) denial of her claim for disability insurance benefits on the ground that her case was improperly adjudicated by an ALJ who was not constitutionally appointed. On that ground, the Court vacated the Commissioner of Social Security’s decision and remanded the matter for further proceedings before a constitutionally appointed ALJ. ECF Nos. 22 & 23.

Following the Court’s decision to remand the case, Plaintiff moved for an award of attorney fees under the Equal Access to Justice Act, 28 U.S.C. § 2412, ECF No. 24, which the Court initially denied. ECF No. 26. However, at Plaintiff’s request, the Court vacated its Order denying attorney fees and granted Plaintiff leave to reply to the Commissioner’s response. ECF No. 30. Having considered Plaintiff’s reply (ECF No. 31) and the Commissioner’s sur-reply (ECF No. 33), the Court will again deny Plaintiff’s Motion for Attorney Fees (ECF No.

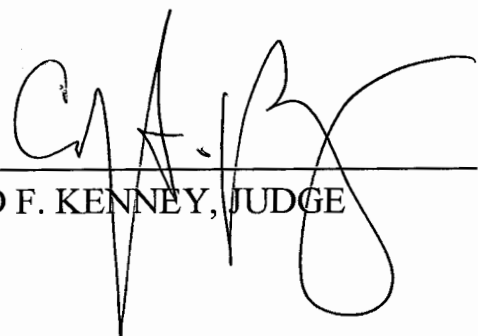
24) on the basis that its consideration of the award of attorney fees at this time is inappropriate.

As the Commissioner contends, in finding that Plaintiff's Appointments Clause claim was meritorious, the Court deemed the ALJ's decision a legal nullity because the ALJ lacked the legal authority to decide Plaintiff's case in the first place. Thus, in order to award attorney fees to Plaintiff's counsel now, the Court would have to analyze and assess the determinations made by the unconstitutionally appointed ALJ in order to determine if the Commissioner was substantially justified having already deemed those same determinations to be void as a matter of law. Accordingly, it is inappropriate for the Court to undertake such an analysis at this time.

For those reasons, the Court will deny Plaintiff's Motion for Attorney Fees (ECF No. 24). An appropriate Order will follow.

Dated: 1-17-2020

BY THE COURT:


CHAD F. KENNEY, JUDGE